

Occupational Safety and Health Administration Review Board

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REVIEW BOARD

Title 20, Chapter 7, consisting of Article 1, Section R20-7-101, adopted by final rulemaking at 6 A.A.R. 2043, effective May 12, 2000 (Supp. 00-2).

ARTICLE 1. OSHA REVIEW BOARD

Section

R20-7-101. Procedures

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R20-7-101. Procedures

In addition to A.R.S. § 23-423, the following apply to the Occupational Safety and Health Administration Review Board (Board):

1. Filing and service.
 - a. A party filing a document with the Board shall submit 1 original and 6 copies to the Board, and 2 copies to the opposing party or, if represented, the opposing party's counsel;
 - b. The Notice of Review mailed under A.R.S. § 23-423(D) shall contain:
 - i. The address for filing documents, and
 - ii. The briefing schedule.
 - c. A document is considered served:
 - i. On the date it is personally delivered;
 - ii. Five days after it is mailed by express or first-class mail; or
 - iii. On the date of the return receipt if it is mailed by registered or certified mail, return receipt requested.
2. Form and size of briefs.
 - a. A party requesting review of an administrative law judge's decision (petitioner) shall file an opening brief with the Board no later than 30 calendar days after service of the briefing schedule, or before any time extension granted under subsection (4) expires. The opening brief shall contain:
 - i. A statement of the case and the administrative law judge's decision;
 - ii. A concise statement of the facts relevant to the issues presented for review with specific references to the record. The record consists of the official hearing transcript and the exhibits accepted into evidence at the hearing before an administrative law judge. This statement of facts shall contain only facts in the record;
 - iii. A statement of the issues presented for review;
 - iv. An argument that contains the petitioner's contentions with respect to the issues presented, with citations to appropriate statutes, rules, or other legal authority; and
 - v. A short conclusion stating the relief sought.
 - b. A party responding to an opening brief (respondent) shall file a response brief with the Board no later than 30 days after service of the opening brief. A response brief shall conform to the requirements of subsections (2)(a)(i) through (2)(a)(v), except that information provided under subsections (2)(a)(i) through (2)(a)(iii) need not be included unless the respondent believes the petitioner's statements are insufficient or incorrect.
 - c. The petitioner may file a reply brief within 20 days after service of the response brief. The reply brief shall be confined strictly to rebutting points urged in the response brief. If the reply brief goes beyond rebutting points urged in the response brief, the Board may strike the additional information from the brief.
 - d. An opening brief and a response brief shall not exceed 35 typewritten pages, and a reply brief shall not exceed 15 typewritten pages, excluding pages containing a table of contents, table of authorities, or appendix. All briefs shall be legible and double-spaced, except quotations of more than 2 lines may be indented and single-spaced.
3. Oral argument.
 - a. A party may request oral argument by noting on the first page of the party's brief immediately below the title of the brief "oral argument requested," or by filing, no later than 10 days after the time for filing the reply brief, a separate document requesting oral argument.
 - b. Each party shall have 15 minutes for oral argument, including no more than 5 minutes in rebuttal for the petitioner. If no oral argument is requested, the Board shall decide the case on the briefs.
 - c. The Board may extend the time for oral argument and may ask questions. Time to respond to the Board's questions is not counted against a party's 15 minutes of oral argument.
 - d. A party may use a presentation aid during oral argument that relies only on facts or evidence in the record.
4. Time extension. A party may request an extension of time to file a brief. The request shall be in writing and filed with the Board.
5. Failure to file a brief or appear at hearing.
 - a. If a petitioner fails to file an opening brief within the time required in the briefing schedule or before any time extension expires, the Board shall dismiss the appeal. If a respondent fails to file a response brief within 30 days of service of the opening brief, the appeal is deemed submitted for decision based only on the opening brief.
 - b. If a party fails to appear at the Board meeting at which the appeal has been scheduled, that party waives oral argument and the Board shall decide the appeal based on the submitted briefs and oral argument by the other party.
6. Board's decision.
 - a. At the time scheduled for the appeal and after oral argument, if any, the Board shall discuss only the issues presented. The Board's discussion, decision, and reason for its decision shall be on the record at the Board meeting.
 - b. A party or a party's attorney shall not provide input during the Board's deliberation. If the Board has additional questions of a party during its deliberation, the Board shall allow each party or each party's attorney to respond.
 - c. The Board shall mail a written decision that conforms to its decision on the record, no later than 30 days of the Board's meeting, to the parties citing the parties' statutory appeal rights.
7. Remand for settlement. Upon the parties' stipulation, the Board may remand a case to the administrative law judge to consider a settlement agreement.

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8. Ex parte communication. A party or a party's attorney shall not communicate, directly or indirectly, with a Board member about any substantive issue in an appeal filed with the Board, but may communicate with the Board if:
 - a. All parties are physically present;
 - b. It is during a scheduled proceeding and a party fails to appear after proper notice; or
 - c. It is by written motion or correspondence with copies to all parties.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R.
2043, effective May 12, 2000 (Supp. 00-2).